

Eastern Newfoundland Regional Appeal Board Decision

Appeal #	15-006-064-050
Appellant(s)	Ricky Collins
Respondent / Authority	Digital Government and Service NL
Date of Hearing	November 25, 2020
Board Members	Clifford Johnston, Chair Paul Boundridge Robert Warren
Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	Karen Tucker, Regional Support Supervisor, Digital Government and Service NL
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Department of Digital Government and Service NL acted in accordance with the *Butterpot-Witless Bay Line Environs Development Control Regulations*, made under the *Urban and Rural Planning Act, 2000* when it refused to approve an application to replace an existing cottage located on a lot at 1 Old Witless Bay Line with a new, larger cottage.

Presentations during the Hearing

1. Planner's Presentation

During the hearing, the Board heard technical details about the subject property and the provisions from the *Butterpot-Witless Bay Line Environs Development Control Regulations* from the Planner.

The Board learned from the technical report given by the planner at the hearing that the subject property is located in a Watershed Protection Designation under the St. John's Urban Region Regional Plan; a cottage is not a Permitted Use or a Discretionary Use in the Watershed Protection Designation. The original cottage is categorized as a Non-Conforming Use and governed by the provisions of Section 108 of the Urban and Rural Planning Act, 2000.

2. Appellant's Presentation

During the hearing, the Board heard from the Appellant who outlined his ground for appeal. The Board learned that the Appellant filed an appeal because he was unaware of the regulatory regime affecting the area in which the subject property was located when he purchased the property in 2016. Upon taking possession of and occupying the original cottage, the Appellant became aware of a pest infestation and that the original cabin was in a state of advanced dilapidation, which prompted him to decide to construct a new cottage rather than renovate the existing cottage.

3. Authority's Presentation

The Board learned that in her capacity as Regional Support Supervisor, Digital Government and Service NL, that Ms. Tucker referred the development application to relevant Government Departments and agencies for review for conformity with Provincial legislation and regulations. The referral process involved a recommendation from the Department of Environment, Climate Change and Municipalities that the application be rejected as the development would conflict with Section 108 of URPA (where a non-conforming use has been destroyed by more than 50% of its value, it shall not be reconstructed or repaired). The Board accepts the argument by the Authority that the proposed cottage is not a permitted use or a discretionary use in the Protected Watershed Zone.

Board's Analysis

- Q:** What is the matter under consideration by the Board?
- A:** The matter under consideration by the Board is whether the Authority acted in accordance with the *Butterpot-Witless Bay Line Environs Development Control Regulations*, made under the *Urban and Rural Planning Act, 2000* when it refused the application for replacement of an existing (original) cottage on February 28, 2020.
- Q:** What is the zoning of the subject property?
- A:** According to the *Butterpot-Witless Bay Line Environs Development Control Regulations* and the *St. John's Urban Region Regional Plan* the subject site is located in the Watershed Protection Zone.
- Q:** Is a cottage a permitted or discretionary use in the Watershed Protection Zone?
- A:** According to the *Butterpot-Witless Bay Line Environs Development Control Regulations*, a cottage is not listed as a permitted use or a discretionary use in the Watershed Protection Zone.
- Q:** Is there provision in the relevant planning legislation for the repair/replacement of the original cottage?
- A:** The original cottage is characterised as a Non-Conforming Use. Section 108 of the Urban and Rural Planning Act 2000 allows for Non-Conforming Uses to continue in the same Non-Conforming manner and provides opportunities for replacement and extension. Section 108 (3)(c) of the Act does not allow for the reconstruction or repair of a Non-Conforming Use where 50% or more of the value of that building is destroyed.

Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. The Board is bound by Section 42 of the *Urban and Rural Planning Act, 2000*, which provides the following for the Eastern Newfoundland Regional Appeal Board:

- (3) *An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed.*
- (10) *In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*

Section 12 of the Urban and Rural Planning Act states:

- A plan and development regulations are binding upon*
- (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
 - (b) a person undertaking a development in the area governed by that plan or those regulations.*

The Board accepts that the *Butterpot-Witless Bay Line Environs Development Control Regulations* are binding upon the Authority. In this case, the Board finds the proposed development did not meet the standards, conditions and requirements of the *Butterpot-Witless Bay Line Environs Development Control Regulations* and the Urban and Rural Planning Act 2000 because the development involves a Non-Conformity and construction without a permit.

Based on the information presented, the Board determined that the Department of Digital Services and Service NL has the authority, and exercised it appropriately, to reject the application to construct a replacement cottage on property located at 1 Old Witless Bay Line.

Board's Order

Based on the information presented, the Board orders that the decision by the Department of Digital Government and Service NL on February 28, 2020 to reject a development application from Ricky Collins to construct a replacement cottage at 1 Old Witless Bay Line, Witless Bay (1.4 kilometres from Bay Bulls Highway and Old Witless Bay Line Intersection) be confirmed.

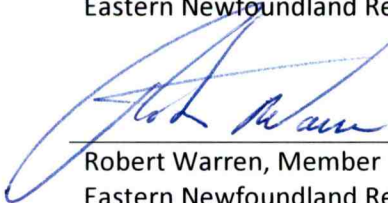
The Respondent and the Appellant(s) are bound by the decision of this Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 25 of November, 2020.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board



Paul Boudridge, Member
Eastern Newfoundland Regional Appeal Board